

Troutman Pepper Hamilton Sanders LLP
Hercules Plaza, 1313 N. Market St., Suite 5100, P.O. Box 1709
Wilmington, DE 19899-1709



troutman.com

Joanna J. Cline
302.777.6542
joanna.cline@troutman.com

July 9, 2021

VIA CM / ECF

Honorable Jennifer L. Hall
United States District Court for the
District of Delaware
844 North King Street, Room 3124
Wilmington, DE 19801

Re: Szubielski v. Pierce, et al., Case No. 15-984-JLH

Dear Judge Hall:

Plaintiff objects to and/or comments on the Court's Proposed Final Jury Instructions as follows:

- On page 4 (Evidence Defined), Plaintiff agrees that the bolded language in numbered paragraphs 3 and 4 may be omitted.
- On page 15 (Section 1983 – Deprivation of a Federal Right), Plaintiff objects to the instruction as drafted. Plaintiff instead proposes that the paragraph that begins "First," be amended as shown in bold below:

First: That Mr. Szubielski engaged in a protected activity under the First Amendment by serving as an exemplar in the lawsuit against the Delaware Department of Corrections. It is my duty to instruct you on whether an activity is protected by the First Amendment. A person's right to access the courts by serving as an exemplar in a lawsuit is conduct that is protected by the First Amendment. **The parties have agreed that Mr. Szubielski served as an exemplar in the lawsuit against the Delaware Department of Corrections. In other words, this element of Mr. Szubielski's claim is not in dispute, and you must find that this element has been established.**

Plaintiff's basis for this position is paragraph 12 of the parties' Uncontested Facts in the Final Pretrial Order.

- On page 21 (Deliberations), paragraph 3, line 2, Plaintiff proposes that the line be revised to read "their respective burdens of proof, the parties have established their claims and/or defenses."

Plaintiff objects to and/or comments on the Court's Proposed Verdict Sheet as follows:

Honorable Jennifer L. Hall

July 9, 2021

Page 2



- In light of paragraph 12 of the parties' Uncontested Facts in the Final Pretrial Order, Plaintiff objects to Question 1. We submit that Question 1 should be deleted and the remaining paragraph number references be re-numbered accordingly.
- In current question 3, line 3, Plaintiff suggests replacing "the" with "Mr. Pierce's." For current question 4, Plaintiff suggests adding in YES and NO lines after the question (in the same manner they appear in current questions 1-3).

Respectfully,

A handwritten signature in blue ink, appearing to read "Joanna J. Cline".

Joanna J. Cline
DE Bar No. 5873

JJC:dw

cc: All Counsel (via CM / ECF)